

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the Gas Market Activities of Southern California Gas Company, San Diego Gas and Electric, Southwest Gas, Pacific Gas and Electric, and Southern California Edison and their impact on the Gas Price Spikes experienced at the California Border from March 2000 through May 2001.

Investigation 02-11-040
(Filed November 21, 2002)

Order Instituting Investigation whether San Diego Gas & Electric Company, Southern California Gas Company and their holding company, Sempra Energy, respondents, have complied with relevant statutes and Commission decisions, pertaining to respondents' holding company systems and affiliate activities.

Investigation 03-02-033
(Filed February 27, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
RE MOTION TO COMPEL**

On July 22, 2005, Southern California Edison Company (Edison) filed its motion for an order compelling Sempra Energy Trading (SET) to produce certain documents. Edison requested an order to compel answers to Question No. 25 (Data Request SCE-SET-5a) and Question No. 11 (Data Request SCE-SET-6). In its response of August 8, 2005, SET indicated that it had agreed to provide the information sought by Question No. 25; that dispute is now moot. SET opposed the relief requested as to Question No. 11. Pursuant to my consent, Edison filed a reply on September 2, 2005, and SET filed a surreply on September 12, 2005.

On September 23, 2005, I notified the parties that I still did not have sufficient information to decide the dispute; and, in response, SET and Edison provided additional information on October 2 and 3, 2005. In this ruling, I grant the relief requested by Edison as to Question No. 11.

Information Requested

Edison's Question No. 11 seeks additional information concerning matters reported in spreadsheets provided by SET in response to earlier discovery requests propounded by Edison. These spreadsheets set forth information concerning SET's physical and financial natural gas and electricity purchase and sale transactions.

This information was originally requested in amended data requests submitted by Edison to SET following an October 30, 2003, law and motion hearing. Edison requested selected information on natural gas and electric transactions in different gas producing basins and other geographic areas. For instance, "for gas purchases and sales in Western producing basins," SET was to produce this information: price, whether the price was fixed or indexed, what index was used, whether the transaction was a sale or purchase, counterparty name, quantity, term, date of agreement, and location. SCE-SET-1, Question No. 16, set forth in Jazayeri Decl. ¶ 12, Ex. 10, at p. 222.

In response to these questions, SET set forth its information in spreadsheets and later updated these spreadsheets to correct earlier errors and to include a glossary of terms. The spreadsheets now at issue were produced in February 2004.

On March 4, 2005, Edison propounded additional discovery requests including Question No. 11:

Please update the spreadsheets with bates numbers SET 0001b, SET 0002b, SET 0003b, SET 0004b, and SET 0548 [hereinafter “Subject Spreadsheets”] to include the following columns that appear in SET 00042206: (a) Settlement; (b) Trade description; (c) Trader Book; (d) Broker; (e) Strategy; (f) Deal. Please also provide a list of all other data fields related to SET’s western physical financial gas and electric transactions that appear in SET’s accounting or deal capture system.

Jazayeri Decl. ¶ 12, Ex. 3, at p. 004. SET objects to this question. The parties represent that they have attempted to resolve this dispute.

Discussion

I have previously determined that SET is not the typical bystander to this litigation and must, at its expense, respond to proper discovery requests propounded upon it by Edison. This is because Sempra entities, including SET, have a continuing obligation to provide sufficient information for the Commission to determine whether these entities have complied with prior Commission decisions and orders approving the Sempra mergers. *See* ALJ Ruling on Motion Concerning Discovery Costs at 7-8 (April 15, 2004).

SET’s main objection to Question No. 11 is that the inquiry requires a burdensome effort to add more information for records that were first generated more than 18 months ago. SET claims that the database used to prepare the Subject Spreadsheets was extracted from the company’s normal business records and that the database will have to be recreated to add the information Edison now requests. SET argues that this is burdensome, untimely, and duplicative. SET also maintains that, in some instances, the search will produce only irrelevant information.

Although not binding on the Commission, we may refer to the California Code of Civil Procedure (CCP) for guidance on discovery matters. The CCP

attempts to limit the total number of interrogatories; but the CCP does allow a party to propound interrogatories at any time (Section 2030.020(a)), to use its allotment of interrogatories at different times during the case (Section 2030.030(b)), and, if necessary, to secure the judge's permission to propound additional supplemental interrogatories (Section 2030.070(c)). Thus, propounding discovery requests at different times is a common practice under California civil procedure. While a year many have separated Edison's requests, SET has not demonstrated that delay itself has caused or increased its burden.

The key issue is whether Question No. 11 is unreasonably cumulative or duplicative or whether the information elicited by the question is obtainable from another source that is more convenient, less burdensome, or less expensive. *See* CCP § 2019.030(a)(1). Most discovery is burdensome; the issue here is whether Edison's request is unreasonably or oppressively so.

In this regard, SET first argues that Edison's request is duplicative since Edison already possesses information from two of the six categories mentioned in the question: "settlement" and "trade description" information. I have reviewed SET 00042206, a spreadsheet that includes these additional columns, and compared it to the other spreadsheets that Edison seeks to have updated. It is not readily apparent to me that the "settlement" and "trade description" information appearing in SET 00042206 has been provided in the other spreadsheets supplied by SET. However, I will adopt SET's representation that this information is already embodied in the Subject Spreadsheets. Thus, SET will only be minimally burdened in identifying and setting forth separately the data in the Subject Spreadsheets that SET believes is "settlement" or "trade description" information.

SET then argues that the information requested by Edison in the other four categories (Trader Book, Broker, Strategy, and Deal) will require SET “yet again to devote significant manpower and resources to searching operational databases, isolating potentially relevant transactions, and generating additional spreadsheets” SET Opposition at 14 (August 8, 2005). Edison’s request appears to involve approximately 37,760 records that already have been identified by SET in response to earlier requests. Because I lacked sufficient information to evaluate the burden of providing four additional categories of information for these records, I asked SET and Edison to respond to these additional questions:

1. Does each of these 37,760 records have a unique identifier so that they [sic] can be readily identified in the larger SET operational database(s)?
2. If so, can a macro or similar program be used to automatically search the operational database(s), extract the additional fields, and add those fields and information to the custom databases used to generate the five spreadsheets?
3. What is the estimated cost of undertaking this search, and the estimated number of hours, if technically feasible?

ALJ e-mailed to SET & Edison (September 23, 2005). I specially urged the parties’ information technology representatives to meet and confer on these questions and provide me answers by joint or separate declarations.

In response to these questions, SET filed the declaration of Jack Burke, SET’s Vice President of Development (who primarily works in the information technology department). Burke indicated that each record does have a unique identifier and, using this identifier, the company could prepare a script to extract additional fields and add this information to the previously produced

spreadsheets. Burke indicated it was difficult to estimate the precise cost involved, but he suggested that the revised spreadsheets could be generated in approximately five days. Declaration of Jack Burke (September 30, 2005).

Edison's attorney sent me an e-mail on October 3, 2005. Since this e-mail is not a pleading, I have not considered it in resolving this motion other than to respond below to one statement concerning the entirety of SET's operational database.

Burke's very cursory declaration does not convince me that Edison's request for information in the four additional fields would be unreasonably burdensome. Other than a rough estimate of five days, Burke's declaration does not provide me with information about the number of employees or consultants who would be involved, their skill levels, the cost of the undertaking, or specifics concerning any business disruption resulting from the search. Lacking this type of information, I am unable to conclude that the undertaking would be unreasonably burdensome.

In its pleadings and October 3 e-mail, Edison appears to argue that it also requested SET to provide all the information in any other data fields maintained in SET's operational database. I do not read Edison's Question No. 11 so broadly. I read Question No. 11 to ask SET to identify the field names for any additional data fields maintained as part of its operational database ("Please provide a list of all other data fields . . ."). I do not read Question No. 11 to request any information in those fields. I will only require that SET provide the names of any additional data fields comprising its operational database for its western physical financial gas and electric transactions.

IT IS RULED that:

1. Southern California Edison's Motion for an Order Compelling Sempra Energy Trading (July 22, 2005) to Produce Documents is granted to the extent that SET shall update the spreadsheets identified in Edison's Question No. 11 to include data for these six additional fields: (a) Settlement; (b) Trade description; (c) Trader Book; (d) Broker; (e) Strategy; and (f) Deal.

2. SET shall also provide the names or basic description for any additional data fields comprising SET's operational database for its western physical financial gas and electric transactions. Edison's request for the production of SET's entire electronic database (other than data in fields ordered to be provided) is denied since the request exceeds the relief originally requested by Edison in its motion.

3. SET shall provide this information on or before Wednesday, October 26, 2005.

Dated October 11, 2005, at San Francisco, California.

/s/ JOHN E. THORSON

John E. Thorson
Law and Motion
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Re Motion to Compel on all parties of record in this proceeding or their attorneys of record.

Dated October 11, 2005, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

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